

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant alleges that he suffered accidental injury on October 15, 2002, while picking up two five-gallon buckets of oil. Claimant testified that his arm popped and he began to experience pain in his right upper extremity to the shoulder. Claimant said he told Tim Hoss, his supervisor. Mr. Hoss did not testify in this matter.

Claimant first sought medical treatment at the Pratt Regional Medical Center emergency room on October 27, 2002. Claimant testified that his date of accident may not have been accurate, as he was not sure if it was on October 15 or possibly as late as October 20, when he suffered the injury. He felt that two weeks was too long between the accident date and his first receipt of medical care. He was uncertain as to the specific date of accident. Claimant submitted his bills to Blue Cross/Blue Shield for payment. The day after the accident, claimant went to Eliska Webster, a physician's assistant, in Kingman, Kansas. She provided claimant with pain medication and recommended an MRI, which claimant did not obtain as he could not afford it.

Two medical reports contemporaneous with claimant's obtaining medical care at the Pratt Regional Medical Center emergency room were created on October 27, 2002. The forms, consisting of two pages, appear to be have been handwritten by someone other than claimant. The first indicated that claimant suffered an injury seven days ago, while picking up a "heavy bucket," at which time he experienced shoulder pain. It goes on to state that "today," claimant was "wrenching" and felt pain in his right shoulder again. A separate page of that Pratt Regional Medical Center form, which is written in a different handwriting, indicates that claimant suffered a right shoulder injury when his shoulder popped approximately a week before while carrying five-gallon buckets. The report goes on to state that claimant was getting better when he reinjured himself "today," wrenching a bolt on a motorcycle.

Claimant denies telling any employee of the Pratt Regional Medical Center that he injured himself while working on a motorcycle. He acknowledges he was sitting on a motorcycle on the 27th because the cold air helped his shoulder. The medical reports submitted by respondent at the preliminary hearing are difficult to read and it is hard to fully comprehend exactly what was written on those forms. Additional explanation from the health care providers would be most beneficial.

The next medical report available indicates claimant sought medical treatment on April 14, 2003. Claimant, however, testified that he had returned to the doctor before that date, but that some medical records were apparently missing. Claimant testified he went to the doctor approximately three times for treatment of his shoulder.

Prior to picking up the buckets, claimant had no problems with his shoulders. He also denied working on his motorcycle on October 27, 2002, or suffering any type of injury involving the motorcycle on that date.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.¹ Here, claimant was the only person to testify. His testimony regarding the accident has been unwavering. However, certain medical reports created at the Pratt Regional Medical Center do appear to contradict claimant's denial of an intervening accident. The lack of clarity associated with the medical reports and the unavailability of the testimony of the authors of those reports creates concern in the Board's mind. Additional explanation needs to be provided in order to create a clear understanding as to what happened and what was reported at the Pratt Regional Medical Center on October 27. Until additional explanation is provided, the Board finds that claimant has proven by a preponderance of the credible evidence that he did suffer accidental injury arising out of and in the course of his employment on or about October 15, 2002, while picking up five-gallon buckets of oil. The Board cannot find from this record that claimant suffered an intervening accident on October 27, 2002. The Board looks forward to additional explanation regarding the creation of the October 27, 2002 Pratt Regional Medical Center documents. The Board, therefore, finds that the Order of October 8, 2003, should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated October 8, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 2003.

BOARD MEMBER

c: Mark T. Schoenhofer, Attorney for Claimant
Vincent A. Burnett, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Anne Haight, Acting Workers Compensation Director

¹ K.S.A. 44-501 and K.S.A. 2002 Supp. 44-508(g).